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*K.F.*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/016,707 01/30/98 MEYER

P 1017US01

EXAMINER
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IM62/0708

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XU, H	
ART UNIT	PAPER NUMBER

1774

DATE MAILED:

07/08/99

*6*

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/016,707

Applicant(s)  
Meyer

Examiner  
Hong Xu

Group Art Unit  
1774



☒ Responsive to communication(s) filed on Jan 30, 1998

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire one month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-50 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 1-50 are subject to restriction or election requirement.

## Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1774

## **DETAILED ACTION**

### ***Election/Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-8, drawn to spheroidal particles, classified in class 428, subclass 403.
  - II. Claims 9-17, drawn to a process for spherulizing irregularly shaped particles, classified in class 264, subclass 15.
  - III. Claims 18-34, drawn to an apparatus for spherulizing particles, classified in class 425, subclass 6.
  - V. Claims 35-50, drawn to a feed system for feeding particles and the method of using, classified in class 425, subclass 130.
2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product can be made with a different process. For instance, the particles can be delivered in a upward path to be heated and cooled.
3. Inventions I and III are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for

Art Unit: 1774

making a different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case the product as claimed can be made by a different apparatus. For instance, the particles can be fed upward under air pressure.

4. Inventions II and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process can be practiced by another apparatus without vibrating means since vibrating can be achieved by hand..

5. Inventions of Group I-III are distinct from Group IV. Inventions I-III teach spherulized particles, process of making such particles, and apparatus to make such particles and they are subject to restrictions as discussed above. Invention IV teaches a feed system (apparatus) for feeding irregularly shaped particles and the process of using such apparatus.

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

7. A telephone call was made to Ms. Carole Truesdale on 6/30/99 to request an oral election to the above restriction requirement, but did not result in an election being made.


Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Art Unit: 1774

8. Should you have any questions concerning this communication, please direct them to Hong J. Xu at 703-305-1035. The examiner can be reached at this number from 8:00 am to 4:30 pm E.S.T. Monday -Friday. If attempts to reach the examiner by telephone prove unsuccessful, the examiner's supervisor, William Krynski, can be reached at 703-308-2376. Please allow the examiner twenty-four hours to return your call.

A facsimile center has been established for Group 1700 on the 8th floor of Crystal Plaza 3. The hours of operation are Monday through Friday, 8:45 am to 4:45 pm. The fax numbers for Art Unit 1700 are 703-305-3599 for official after-final faxes, and 703-305-5408 for all other official faxes. Use of the Group 1700 center will facilitate rapid delivery of materials to examiners in Art Unit 1774.

Any inquiry of a general nature, or those relating to the status of this application should be directed to the group receptionist whose telephone number is 703-308-2351.

  
William Krynski  
Supervisory Patent Examiner  
Technology Center 1700

hjk #JX

July 4, 1999